

in the base period, may apply to the Executive Vice President, CCC, for an allocation.

(1) Applicants must demonstrate their ability to process, produce, and market sugar for the applicable crop year.

(2) CCC will consider adverse effects of the allocation upon existing processors and producers.

(3) New entrant cane processors are limited to 50,000 short tons, raw value, the first crop year.

(4) New entrant cane processors will be provided, as determined by CCC:

(i) A share of their State's cane allotment if the processor is located in Hawaii, Puerto Rico, Florida, Louisiana, or Texas, or

(ii) A share of the overall cane allotment if the processor is located in any state not listed in paragraph (f)(4)(i) of this section.

(5) CCC will conduct a hearing on a new entrant application if an interested processor or grower requests a hearing.

(6) If a new entrant acquires and reopens a factory that previously produced beet sugar from sugar beets and sugar beet molasses, but the factory last operated during the 1997 crop year, CCC will:

(i) Assign an allocation to the new entrant not less than the greater of 1.67 percent of the adjusted weighted average quantities of beet sugar produced by all processors during the 1998 through 2000 crop years, as determined under §1435.307, or 1,500,000 hundred-weight.

(ii) Reduce all other beet processor allocations on a pro rata basis.

[69 FR 39813, July 1, 2004, as amended at 69 FR 48765, Aug. 11, 2004]

§ 1435.309 Reassignment of deficits.

(a) CCC will determine, from time to time, whether sugar beet or sugarcane processors will be unable to market their allocations.

(b) Sugar beet and sugar cane processors will report to CCC current inventories, estimated production, expected marketings, and any other pertinent factors CCC deems appropriate to determine a processor's ability to market their allocation.

(c) If CCC determines a sugarcane processor will be unable to market its full allocation for the crop year in which an allotment is in effect, the deficit will be reassigned as follows:

(1) First, to allocations of other sugarcane processors within that State based on each processor's initial allocation share of the State's allotment, but no processor may receive reassigned allocation such that its allocation exceeds its estimated total sugar supply.

(2) If the deficit cannot be eliminated after reassignment within the same State, be reassigned to the other cane States based on each State's initial share of the cane sugar allotment, but no State may receive reassigned State allotment such that its allocation exceeds its estimated total sugar supply, with the reassigned quantity to each State being allocated according to paragraph (c)(1) of this section.

(3) If the deficit cannot be eliminated by paragraphs (c)(1) and (c)(2) of this section, be reassigned to CCC. CCC shall sell such quantity from inventory unless CCC determines such sales would have a significant effect on the sugar price.

(4) If any portion of the deficit remains after paragraphs (c)(1), (c)(2), and (c)(3) of this section have been implemented, be reassigned to imports.

(d) The initial estimate of the sugarcane deficit will be reassigned by June 1. CCC will conduct later reassignments if CCC determines, after June 1, that a sugarcane processor will be unable to market its full allocation.

(e) If CCC determines that a sugar beet processor is unable to market its full allocation for the crop year in which an allotment is in effect, the deficit will:

(1) First, be reassigned proportionately to allocations of other sugar beet processors, depending on the capacity of other processors to fill the portion of the deficit to be reassigned to them, accounting for the interests of associated producers.

(2) If the deficit cannot be eliminated by paragraph (e)(1) of this section, be reassigned to CCC. CCC shall sell such quantity from inventory unless CCC determines such sales would have a significant effect on the sugar price.

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(3) If any portion of the deficit remains after paragraphs (e)(1) and (e)(2) of this section have been implemented, be reassigned to imports.

(f) The crop year allocation of each sugar beet or sugarcane processor who receives a reassignment will be increased accordingly for that year.

[67 FR 54928, Aug. 26, 2002, as amended at 69 FR 55063, Sept. 13, 2004; 69 FR 58037, Sept. 29, 2004; 70 FR 28181, May 17, 2005]

§ 1435.310 Sharing processors' allocations with producers.

(a) Every sugar beet and sugarcane processor must provide CCC a certification that:

(1) The processor intends to share its allocation among its producers fairly and equitably, and in a manner adequately reflecting each producer's production history, and

(2) The processor has, in the previous allotment year, shared its allocation among producers fairly and equitably, reflecting each producer's production history. If a processor is unable to provide such certification, CCC may reduce or eliminate its marketing allocation.

(b) CCC will determine that a processor in a proportionate share state has met the conditions of paragraph (a) of this section if the processor establishes a grower payment plan that incorporates the following provisions:

(1) Pays growers for sugar from their delivered sugarcane in the following priority:

(i) Sugar production from proportionate share acreage; as established under §1435.311, for producers determined by CCC, who;

(A) Delivered to the mill in at least one of the crop years 1999, 2000, or 2001,

(B) Obtained an allocation transfer from a predecessor mill, or

(C) Have been designated by the mill to supply sugarcane replacing sugarcane lost to the mill since the 2001 crop year,

(ii) Sugar production from base acreage, as established under §1435.312, but exclusive of the acreage described in paragraph (b)(1)(i) of this section, for producers who meet the requirements of paragraph (b)(1)(i) of this section, then

(iii) All other sugar production.

(2) If a mill cancels a producer's contract, the mill must permit the producer to move an allocation commensurate with the producer's production history to a mill of the producer's choice.

(3) In determining the payment priority, a processor may aggregate the acreage of an operator (producer making the crop production decisions) across all the operator's farms delivering cane to the processor.

(c) CCC will determine that a processor not in a proportionate share state, which is cooperatively owned by producers, has met the conditions of paragraph (a) of this section if the processor shares its allocation with its producers according to its cooperative membership agreement.

(d) CCC will disclose farm base and reported acres data in a proportionate share state to processors upon their request for growers delivering to their mill. In the case of multiple producers on a farm or growers delivering to more than one mill, subject mills will be responsible for coordinating proportionate share data.

(e) Any producer or processor may request arbitration of a dispute regarding the sharing of the processor's allocation among the producers. Arbitration will be available on behalf of CCC at the State FSA office for the State in which the processor is located. Subsequent review of the arbitration decision is available at the discretion of the Executive Vice President, CCC. Any arbitration is subject to appeal to the Office of the Administrative Law Judge, USDA.

[67 FR 54926, Aug. 26, 2002, as amended at 69 FR 39813, July 1, 2004]

§ 1435.311 Proportionate shares for sugarcane producers.

(a) Proportionate shares and the provisions of this section and §§1435.312 through 1435.316 apply only to Louisiana sugarcane farms.

(b) CCC will determine whether Louisiana sugar production, in the absence of proportionate shares, will exceed the quantity needed to enable processors to fill the State cane sugar allotment and provide a normal carryover inventory. If the determination is made that the